

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 259

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO TAXES AND MINING; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION 63-3022, IDAHO CODE, TO PROVIDE FOR A CERTAIN DEDUCTION FROM CORPORATE INCOME TAX; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 46, TITLE 63, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE PROVISIONS RELATING TO THE PRODUCTION AND DISTRIBUTION OF CERTAIN SILVER MEDALLIONS AND SILVER BARS, TO PROVIDE FOR RULES, TO PROVIDE THAT THE STATE TREASURER SHALL VALUE CERTAIN SILVER MEDALLIONS AND BARS, TO PROVIDE FOR THE ACCEPTANCE BY THE STATE TREASURER OF CERTAIN SILVER MEDALLIONS AND BARS FOR PAYMENT, TO PROVIDE FOR SUSPENSION OF ACQUISITION OF MEDALLIONS AND BARS, TO PROVIDE FOR THE DESIGN OF CERTAIN SILVER MEDALLIONS AND BARS, TO PROVIDE PROVISIONS RELATING TO THE DISTRIBUTION OF CERTAIN SILVER MEDALLIONS AND BARS, TO PROVIDE THAT THE STATE TREASURER HAS THE AUTHORITY TO HEDGE ITS SILVER POSITION IN THE FINANCIAL MARKETS, TO PROVIDE PROVISIONS RELATING TO EXEMPTIONS FROM TAXATION OR FROM ANY SPECIAL ASSESSMENT FOR CERTAIN NEW CAPITAL INVESTMENTS, TO PROVIDE PROVISIONS RELATING TO THE LOCATION OF A CERTAIN NEW FACILITY FOR THE PRODUCTION OF SILVER AND OTHER METALS FROM SILVER ORE OR SILVER ORE CONCENTRATE, TO DEFINE TERMS, TO PROVIDE FOR DETERMINING CERTAIN INVESTMENT VALUE, TO PROVIDE FOR EXCLUSIONS AND TO PROVIDE FOR RULES; AMENDING SECTION 67-1223, IDAHO CODE, TO PROVIDE THAT THE STATE TREASURER SHALL OBTAIN A FEDERAL TRADEMARK ON THE DESIGN OF EACH SERIES OF IDAHO GEMS, TO PROVIDE THAT THE DESIGN OF EACH SERIES OF IDAHO GEMS IS PROPERTY OF THE STATE, TO PROVIDE PROVISIONS RELATING TO INFRINGEMENT OF TRADEMARK AND TO PROVIDE FOR PENALTIES; AMENDING CHAPTER 12, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-1226, IDAHO CODE, TO ESTABLISH THE MINING INFRASTRUCTURE DEVELOPMENT FUND, TO PROVIDE FOR MONEYS DEPOSITED IN THE FUND AND TO PROVIDE FOR USE OF FUND MONEYS; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. The United States Constitution states: "No state shall ... make anything but gold and silver coin a tender in payment of debts ...." The intent of this act is to use the abundant silver resources of the state of Idaho to create a means whereby the people of Idaho can pay their taxes to the state using silver mined from the ground of Idaho, processed in Idaho and finally minted in Idaho. It is the intent of the Legislature to

1 create mining jobs in Idaho while giving the people of Idaho a means to store their wealth in a  
 2 precious metal that is immune from the effects of inflation while complying with the mandates  
 3 of our federal Constitution.

4 SECTION 2. That Section 63-3022, Idaho Code, be, and the same is hereby amended to  
 5 read as follows:

6 63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtractions  
 7 set forth in this section, and in sections 63-3022A through 63-3022Q, Idaho Code, are to be  
 8 applied to the extent allowed in computing Idaho taxable income:

9 (a) Add any state and local taxes, as defined in section 164 of the Internal Revenue Code  
 10 and, measured by net income, paid or accrued during the taxable year adjusted for state or local  
 11 tax refunds used in arriving at taxable income.

12 (b) Add the net operating loss deduction used in arriving at taxable income.

13 (c) (1) A net operating loss for any taxable year commencing on and after January  
 14 1, 2000, shall be a net operating loss carryback not to exceed a total of one hundred  
 15 thousand dollars (\$100,000) to the two (2) immediately preceding taxable years. Any  
 16 portion of the net operating loss not subtracted in the two (2) preceding years may be  
 17 subtracted in the next twenty (20) years succeeding the taxable year in which the loss  
 18 arises in order until exhausted. The sum of the deductions may not exceed the amount  
 19 of the net operating loss deduction incurred. At the election of the taxpayer, the two (2)  
 20 year carryback may be foregone and the loss subtracted from income received in taxable  
 21 years arising in the next twenty (20) years succeeding the taxable year in which the loss  
 22 arises in order until exhausted. The election shall be made as under section 172(b)(3)  
 23 of the Internal Revenue Code. An election under this subsection must be in the manner  
 24 prescribed in the rules of the state tax commission and once made is irrevocable for the  
 25 year in which it is made. The term "income" as used in this subsection (c) means Idaho  
 26 taxable income as defined in this chapter as modified by section 63-3021(b)(2), (3) and  
 27 (4), Idaho Code.

28 (2) Net operating losses incurred by a corporation during a year in which such  
 29 corporation did not transact business in Idaho or was not included in a group of  
 30 corporations combined under subsection (t) of section 63-3027, Idaho Code, may not  
 31 be subtracted. However, if at least one (1) corporation within a group of corporations  
 32 combined under subsection (t) of section 63-3027, Idaho Code, was transacting business  
 33 in Idaho during the taxable year in which the loss was incurred, then the net operating  
 34 loss may be subtracted. Net operating losses incurred by a person, other than a  
 35 corporation, in activities not taxable by Idaho may not be subtracted.

36 (d) In the case of a corporation, add the amount deducted under the provisions of  
 37 sections 243(a) and (c), 244, 245 and 246A of the Internal Revenue Code (relating to dividends  
 38 received by corporations) as limited by section 246(b)(1) of said code.

39 (e) In the case of a corporation, subtract an amount determined under section 78 of the  
 40 Internal Revenue Code to be taxable as dividends.

41 (f) Subtract the amount of any income received or accrued during the taxable year which  
 42 is exempt from taxation by this state, under the provisions of any other law of this state or a  
 43 law of the United States, if not previously subtracted in arriving at taxable income.

44 (g) For the purpose of determining the Idaho taxable income of the beneficiary of a trust  
 45 or of an estate:

(1) Distributable net income as defined for federal tax purposes shall be corrected for the other adjustments required by this section.

(2) Net operating losses attributable to a beneficiary of a trust or estate under section 642 of the Internal Revenue Code shall be a deduction for the beneficiary to the extent that income from the trust or estate would be attributable to this state under the provisions of this chapter.

(h) In the case of an individual who is on active duty as a full-time officer, enlistee or draftee, with the armed forces of the United States, which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more, deduct compensation paid by the armed forces of the United States for services performed outside this state. The deduction is allowed only to the extent such income is included in taxable income.

(i) In the case of a corporation, including any corporation included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, add any capital loss deducted which loss was incurred during any year in which such corporation did not transact business in Idaho. However, do not add any capital loss deducted if a corporation, including any corporation in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred. In the case of persons, other than corporations, add any capital loss deducted which was incurred in activities not taxable by Idaho at the time such loss was incurred. In computing the income taxable to an S corporation or partnership under this section, deduction shall not be allowed for a carryover or carryback of a net operating loss provided for in subsection (c) of this section or a capital loss provided for in section 1212 of the Internal Revenue Code.

(j) In the case of an individual, there shall be allowed as a deduction from gross income either (1) or (2) at the option of the taxpayer:

(1) The standard deduction as defined in section 63, Internal Revenue Code.

(2) Itemized deductions as defined in section 63 of the Internal Revenue Code except state or local taxes measured by net income and general sales taxes as either is defined in section 164 of the Internal Revenue Code.

(k) Add the taxable amount of any lump sum distribution excluded from gross income for federal income tax purposes under the ten (10) year averaging method. The taxable amount will include the ordinary income portion and the amount eligible for the capital gain election.

(l) Deduct any amounts included in gross income under the provisions of section 86 of the Internal Revenue Code relating to certain social security and railroad benefits.

(m) In the case of a self-employed individual, deduct the actual cost of premiums paid to secure worker's compensation insurance for coverage in Idaho, if such cost has not been deducted in arriving at taxable income.

(n) In the case of an individual, deduct the amount contributed to a college savings program pursuant to chapter 54, title 33, Idaho Code, but not more than four thousand dollars (\$4,000) per tax year. If the contribution is made on or before April 15, 2001, it may be deducted for tax year 2000 and an individual can make another contribution and claim the deduction according to the limits provided in this subsection during 2001 for tax year 2001, as long as the contribution is made on or before December 31, 2001.

(o) In the case of an individual, add the amount of a nonqualified withdrawal from an individual trust account or savings account established pursuant to chapter 54, title 33, Idaho

Code, less any amount of such nonqualified withdrawal included in the individual's federal gross income pursuant to section 529 of the Internal Revenue Code.

(p) In the case of an individual, add the amount of a withdrawal from an individual trust account or savings account established pursuant to chapter 54, title 33, Idaho Code, transferred to a qualified tuition program, as defined in section 529 of the Internal Revenue Code, that is operated by a state other than Idaho. The addition provided in this subsection is limited to the amount of the total contributions to the Idaho individual trust account or savings account by the account owner in the twelve (12) months preceding the date of the transfer.

(q) In the case of an individual or corporation qualifying for the property tax exemption provided for in section 63-4603, Idaho Code, deduct the amount attributable to the silver production facility. The deduction provided for in this subsection (q) shall be limited to ten (10) years, with such period beginning at the time of the issuance of a certificate of occupancy by the local authority having jurisdiction at the commencement of production at such silver facility, whichever event occurs first.

SECTION 3. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 46, Title 63, Idaho Code, and to read as follows:

#### CHAPTER 46 SILVER VALLEY ECONOMIC STIMULUS ACT OF 2009

63-4601. SHORT TITLE. This chapter shall be known and may be cited as the "Silver Valley Economic Stimulus Act of 2009."

63-4602. SILVER MEDALLIONS AND SILVER BARS ISSUED BY THE STATE TREASURER. (1) The state treasurer ("treasurer") is authorized to issue a request for proposal to any person or entity already qualified by law to do business within the state of Idaho and having a physical presence in this state (such person or entity hereinafter referred to as "firm" or "firms" for the following purpose: The production and distribution as set forth herein of: (a) medallions each containing one-half (1/2) troy ounce of silver and/or one (1) troy ounce of silver; and (b) bars each containing ten (10) troy ounces of silver and/or fifty (50) troy ounces of silver. The silver shall be alloyed to no less than ninety percent (90%) fineness nor more than ninety-nine and nine-tenths (99.9%) fineness. The medallions shall be struck with a bullion type finish. A one (1) ounce medallion shall be called an "Idaho Gem." The one (1) ounce medallion shall be one and five hundred ninety-eight thousandths (1.598) inches in diameter and shall have a serrated edge. The medallions and bars shall state the weight and the fineness of the silver contained therein. The treasurer shall purchase an inventory of medallions and bars from the successful firm with moneys from the presale of same, using any grant moneys for this purpose or using funds appropriated from the general fund.

(2) The treasurer shall offer these medallions and bars for sale to the public. The treasurer shall value these medallions and bars at the daily market price of a single bullion quality one (1) troy ounce silver American Eagle offered by a widely recognized precious metal dealer. At the treasurer's office in Boise, Idaho, the treasurer shall accept these medallions and bars for payment to the state of taxes and fees. The treasurer shall also accept the one (1) troy ounce bullion silver American Eagle at its single one (1) ounce daily market price for payment to the state of taxes and fees.

(3) The treasurer, at his discretion, may accept such silver medallions and bars, including the one (1) troy ounce silver American Eagle, from the public for the payment to the state of taxes and fees at additional locations throughout the state as the treasurer shall designate. The treasurer shall not offer a discount for a quantity of medallions or bars, but shall complete all such transactions at the one (1) troy ounce bullion market price determined pursuant to subsection (2) of this section.

(4) The treasurer shall have the authority to suspend acquisition of such medallions and bars if the daily market price as described in subsection (2) of this section is insufficient to cover the cost of minting, marketing and distribution including labor, materials, use of equipment and machinery, promotional and overhead expenses, which costs may be passed on by the person or entity supplying the medallions and bars.

(5) The design of the medallions and bars shall be approved by the committee referenced in section 67-1223(3), Idaho Code, before any firm is authorized to produce such medallions and bars. The medallions and bars shall not incorporate the state seal or other governmental emblem into their design. The state shall secure a copyright for the design of the medallions and bars and it shall be a misdemeanor to produce any such medallion or bar without the authority of the treasurer. The successful firm may offer for sale such medallions and bars to the public, but shall agree by contract with the treasurer not to allow the retail sale of such medallions or bars at a price less than that of the price the treasurer offers them for sale to the public.

(6) The treasurer shall use his discretion to inventory a quantity of medallions and bars to satisfy the public's demand to purchase such medallions and bars. The treasurer shall stipulate in any request for proposal that the medallions and bars be minted in this state and that the silver be refined in this state. The firm with which the treasurer contracts need not be a silver production facility or a mint.

(7) When there is silver in the treasury, the treasurer shall pay by these medallions and bars any vendor of the state that so requests payment in silver for services or products, valuing them at the same valuation at which they are offered to the public. When receiving the medallions and bars for the payment of taxes and fees, the treasurer shall value them at the same value that they are offered to the public. When there is a limited amount of silver medallions and bars in the treasury, the treasurer shall give preference to the state's vendors who request to be paid in silver.

(8) The treasurer shall promulgate rules to account for the receipt of taxes and fees that would otherwise be paid to the state tax commission. At his discretion, the treasurer may promulgate additional rules to account for the receipt of taxes and fees that would otherwise be paid to other state agencies. The treasurer may liquidate a portion of the inventory of medallions and bars, if in the treasurer's discretion, there is too much inventory in the treasury.

(9) Should the state treasurer have a quantity of silver in the treasury, the state treasurer shall have the authority to hedge its silver position in the financial markets to protect the state against adverse changes in the market value of silver. The state treasurer shall have the authority to promulgate additional rules for the implementation of this act.

63-4603. TAX EXEMPTION FOR NEW CAPITAL INVESTMENTS. (1) For calendar years beginning on or after January 1, 2009, the net taxable value of the improvements to property of a taxpayer used for the development of a new facility for the production of silver and other metals from silver ore or silver ore concentrate shall be exempt from taxation for

a period of twenty (20) years, such period to begin from the commencement of construction initiated by the first inspection after the issuance of a building permit. The exemption shall apply to all real and personal property associated with the silver production facility up to a limit of seventy-five million dollars (\$75,000,000). Such property shall be exempt from property taxation and any special assessment. The facility shall be located in a single county in the state of Idaho. It shall be permissible for the facility to be temporarily sited near the principal threat material (PTM) cell located west of Kellogg, Idaho, in Shoshone county owned by the state of Idaho, which has known concentrations of valuable minerals other than silver, for the purpose of processing the material in the PTM cell. After the material is processed in the PTM cell, the production facility may be permanently located at a new location within the state for the purpose of processing silver ore and silver ore concentrate while maintaining the tax exemption. The exemption shall apply only to the extent that such property constitutes a new capital investment as defined in subsection (2) of this section.

(2) For purposes of this section, the following definitions shall apply:

(a) "New capital investment" means an investment of at least twenty million dollars (\$20,000,000) by the acquisition, construction, improvement or installation of real or personal property related to new plant and building facilities at a project site located within the county referred to in subsection (1) of this section.

(b) "New plant and building facilities" means:

(i) Qualified investments as provided for in section 63-3029B(3), Idaho Code; or

(ii) Buildings or structural components of buildings.

(3) The property included in the calculation for purposes of determining the investment value shall include all real property owned, and all personal property owned, leased or rented directly associated with the new silver production facility. With respect to leased or rented personal property, only that portion of the property for which a taxpayer is contractually liable for payment of property taxes thereon, shall be included in the calculation of the investment.

(4) Property subject to the provisions of this section shall not be included on the property roll or the new construction roll prepared by the county assessor in accordance with section 63-301 or 63-301A, Idaho Code, respectively, until the exemption ceases.

(5) The state tax commission shall adopt rules necessary to implement the provisions of this section.

SECTION 4. That Section 67-1223, Idaho Code, be, and the same is hereby amended to read as follows:

67-1223. IDAHO COMMEMORATIVE SILVER MEDALLIONS ISSUED BY THE STATE TREASURER – TRADEMARK – IDAHO GEMS. (1) The state treasurer is hereby authorized to issue a series of commemorative silver medallions for sale to the public. Each series shall commemorate Idaho history, people or resources and may bear the great seal of the state of Idaho. Medallions shall contain one (1) ounce of fine silver, shall be alloyed to at least ninety percent (90%) fineness, and shall not constitute legal tender. No sales or use tax shall be imposed on the sale or purchase of medallions from the state treasurer or any agent designated by the state treasurer. Only mints which have contracted with the state treasurer may produce Idaho commemorative silver medallions. Any other production of such medallions is a misdemeanor.

(2) The state treasurer shall make such arrangements as the state treasurer considers appropriate for the production, promotion, distribution and sale of medallions, and shall ensure

1 that all moneys received from the sale of medallions are paid into the state treasury and  
2 credited to the state veterans cemetery maintenance fund created in section 65-107, Idaho Code.  
3 Provided however, the state treasurer is hereby authorized to retain such amounts from the  
4 sale of medallions as necessary to repay costs incurred by the state treasurer in the promotion,  
5 shipping and handling of medallions. Provided further, if the initial cost to mint a series of  
6 medallions is provided by moneys from another state fund, then such other fund shall first  
7 be reimbursed for such costs before the remaining revenues are credited to the state veterans  
8 cemetery maintenance fund. The revenues shall be used for the purposes designated in section  
9 65-107, Idaho Code.

10 (3) The state treasurer, in collaboration with a committee of legislators comprised of  
11 representatives appointed by the speaker of the house of representatives and senators appointed  
12 by the president pro tempore of the senate, shall determine the number of medallions to be  
13 issued in a series, shall determine the number of series to be issued, and shall approve the  
14 design of medallions for each series.

15 (4) The state treasurer, as agent of the state of Idaho, is hereby directed to obtain  
16 a federal trademark on the design of each series of medallions issued, and Idaho Gems as  
17 provided for in section 63-4602, Idaho Code, and is further authorized, after consultation with  
18 the attorney general, to register for a state trademark under chapter 5, title 48, Idaho Code.  
19 The design of each series of Idaho commemorative silver medallions and Idaho Gems is the  
20 property of the state of Idaho, and the state of Idaho and the taxpayers shall be deemed to  
21 have a trademark on each design. It is the duty of the state treasurer to protect each and every  
22 trademark.

23 (a) If a person reproduces a trademark medallion or Idaho Gem design and distributes  
24 any product using any such design for the purpose of direct or indirect commercial  
25 advantage, the person shall owe to the state treasurer, as the agent of the state of Idaho, a  
26 royalty fee in addition to the revenues derived from the sale of products using a medallion  
27 or Idaho Gem design. Any person who reproduces a trademark design and distributes  
28 any product with a medallion or Idaho Gem design in violation of the provisions of this  
29 subsection (4), shall be deemed to be an infringer of the state of Idaho's trademark. The  
30 state treasurer, through the office of the attorney general, is entitled to institute an action  
31 for any infringement of that particular right committed while the state treasurer or his  
32 designated agent has custody of the trademark.

33 (b) A court having jurisdiction of a civil action arising under this subsection (4) may  
34 grant such relief as it deems appropriate. At any time while an action under this  
35 subsection (4) is pending, the court may order the impounding, on such terms as it deems  
36 reasonable, of all products in inventory of the infringer which are in violation of law.

37 (c) An infringer on the state of Idaho's trademark pursuant to this subsection (4) is liable  
38 for any profits the infringer has incurred reproducing a trademark design and distributing  
39 products using the design for commercial purposes or is liable for statutory damages as  
40 provided in paragraph (d) of this subsection (4).

41 (d) The state treasurer, as agent of the trademark owner, may elect, at any time before  
42 final judgment is rendered, to recover, instead of actual damages and profits, an award of  
43 statutory damages for all infringements involved in the action, with respect to a trademark  
44 medallion or Idaho Gem design for which any one (1) infringer is liable individually, or  
45 for which any two (2) or more infringers are liable jointly and severally, in a sum of not

1 less than two hundred fifty dollars (\$250) or more than ten thousand dollars (\$10,000), as  
 2 the court considers just.

3 (e) In any civil action under this subsection (4), the court may allow the recovery of  
 4 full costs by or against any party and may also award reasonable attorney's fees to the  
 5 prevailing party as part of the costs.

6 (5) Medallions in the first series issued shall commemorate "Support of Idaho's Heroes"  
 7 to honor the courage and sacrifice of all Idaho servicemen and veterans of the United States  
 8 armed forces and Idaho military branches of the armed services.

9 SECTION 5. That Chapter 12, Title 67, Idaho Code, be, and the same is hereby amended  
 10 by the addition thereto of a NEW SECTION, to be known and designated as Section 67-1226,  
 11 Idaho Code, and to read as follows:

12 67-1226. MINING INFRASTRUCTURE DEVELOPMENT FUND ESTABLISHED –  
 13 MONEYS. (1) There is hereby established in the state treasury a fund to be known as the  
 14 "Mining Infrastructure Development Fund," to which shall be credited:

15 (a) Twenty-five percent (25%) of any state of Idaho surplus funds from the processing of  
 16 the PTM cell as provided in section 63-4602, Idaho Code;

17 (b) All other moneys as may be provided by law.

18 (2) All such moneys that may hereafter come into such fund are hereby continuously  
 19 appropriated to the Idaho department of commerce for carrying out the purposes of the fund as  
 20 provided for in this section through grants or any other appropriate means determined by the  
 21 department. Moneys in the fund established in this section shall be used for the development  
 22 of public works and/or transportation infrastructure for the aid and development of mining  
 23 resources in the state of Idaho. The department is hereby authorized to promulgate rules to  
 24 implement the provisions of this subsection (2).

25 (3) Interest earned on the investment of idle moneys in the mining infrastructure  
 26 development fund established in this section shall be paid to the fund.

27 (4) All idle moneys in the fund established in this section shall be invested by the state  
 28 treasury in the same manner as provided in section 67-1210, Idaho Code, with respect to other  
 29 surplus or idle moneys in the state treasury.

30 SECTION 6. The provisions of this act are hereby declared to be severable and if any  
 31 provision of this act or the application of such provision to any person or circumstance is  
 32 declared invalid for any reason, such declaration shall not affect the validity of the remaining  
 33 portions of this act.

34 SECTION 7. An emergency existing therefor, which emergency is hereby declared to  
 35 exist, this act shall be in full force and effect on and after its passage and approval.